

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

In Re:)	Case No. 95-50321
)	Chapter 13
HOWARD ROY YOUNT, JR. and)	
PATRICIA C. YOUNT,)	
)	
Debtors.)	

ORDER ALLOWING INCREASE IN VALUATION OF SECURED CLAIM

This matter comes before the Court upon the Motion by Chrysler Credit Corporation for Increase in Valuation of Secured Claim filed on September 7, 1995. A hearing was held in the matter on October 3, 1995 in Statesville, North Carolina. Based on the Court's record and that hearing, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Debtors filed for Chapter 13 relief on May 18, 1995. An Order confirming their plan was entered by this Court on July 19, 1995. On Schedule D of the Debtors' filing, Chrysler Credit Corporation ("CCC") was listed as a secured creditor holding a claim for \$18,536.40 against a 1994 Dodge Caravan. The vehicle was valued at \$15,000.00, leaving CCC undersecured by \$3,536.40.

When, prior to their Bankruptcy filing, the Debtors purchased the Dodge, they executed a Retail Installment Contract ("contract") to finance the purchase. That contract was later assigned to CCC. Under the contract, the Debtors borrowed a total of \$20,249.94,

including \$1,295.00 for an optional extended service contract and \$725.44 for optional credit life insurance. Paragraph C, found on the back of the contract, provides that the Debtors:

. . . grant to Creditor a security interest in and agree to assignment of any money received by Creditor as proceeds, rebate, or refund of, credit insurance premiums or service contract charges financed in this contract due to cancellation or termination.

On June 20, 1995, the first meeting of creditors was held in this case. At that meeting, the Debtors assumed both the extended warranty contract and the credit life insurance contract. At that time, CCC requested that the Standing Trustee increase the amount of its secured claim by \$1,683.00 to include the present value of the extended warranty and life insurance contracts. The Trustee refused to do so. Thereafter, CCC filed its September 7 motion asking the Court to increase the value of its secured claim by this amount. Further, at the October 3 hearing, CCC requested, in the alternative, that the Debtors be forced to reject the contracts and that the unearned premiums be used to reduce its secured claim. The Debtors and Trustee oppose CCC's request for relief.

CONCLUSIONS OF LAW

The determination of a claim's secured status is governed by section 506 of the Bankruptcy Code. Under that section as previously interpreted within this District, a creditor's collateral is to be valued as of the date of the filing of the petition. In re Wenar Acquisition Co., Wenar Corp., Rolls Food Systems, Case Nos. C-B-89-1001, C-B-89-1002, C-B-89-1003 (Bankr. W.D.N.C. May,

1990). As of May 18, 1995, the filing date of the Debtors' bankruptcy case, it appears from the wording of the contract between CCC and the Debtors that CCC had a security interest in both the extended warranty and credit life insurance contracts. Paragraph C of the contract states:

"[y]ou also grant to Creditor a security interest in and agree to assignment of any money received by Creditor as proceeds, rebate or refund of credit insurance premiums or service contract charges financed in this contract due to termination or cancellation."

Additionally, upon a default by the Debtors, the contract allows CCC to repossess the car, cancel the warranty and insurance contracts, and retain any unearned premiums as partial payment for the debt owed it by the Debtors.

The Debtors argue that CCC's security interest does not attach until cancellation or termination of one or both of the supplemental contracts, neither of which has yet occurred and therefore the creditor has no lien on these assets. This Court, following the reasoning of another bankruptcy court within the Fourth Circuit, that being In re Cooper, 104 B.R. 774 (Bkrtcy. S.D.W.Va. 1989), finds the Debtor's argument unpersuasive.

Dealing with facts substantially similar to the facts of this case, Judge Pearson in Cooper held that, "[t]he unearned insurance premiums were established, and the security interest in those premiums attached, when GMAC made full payment of the premiums." Id. at 775. Explaining its rationale, the Cooper Court pointed out that cancellation of the contract did not create the unearned premiums, it was merely a condition precedent to the Creditor

collecting on its interest. Id. Here, as in Cooper, the creditor effectively paid for the insurance premiums in full when the contract was entered. And under the reasoning of Cooper, CCC's security interest in both the warranty and insurance contracts attached on June 30, 1994, the day the retail installment contract was signed by the Debtors and assigned to CCC.

CCC being found to possess a security interest in the extended warranty and the credit life insurance contracts, the question arises whether those interests have been properly perfected. Generally, the perfection of security interests is governed by Article 9 of the Uniform Commercial Code ("UCC"). However, security interests in insurance fall outside the ambit of the UCC. Listing transactions that are excluded from the UCC, Section 25-9-104 of the North Carolina General Statutes states, "[t]his article does not apply . . . to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (G.S. 25-9-306) and priorities in proceeds (G.S. 25-9-312)."

With regard to insurance, the UCC defines proceeds to be "[i]nsurance payable by reason of loss or damage to the collateral." N.C.G.S. § 25-9-306. By this definition, perfection issues for security interests in life insurance policies are not determined by the UCC.

Since the UCC does not apply, the Court must look to North Carolina law to determine whether any additional steps are necessary to perfect CCC's security interest. This Court finds no

North Carolina law that requires that CCC perfect its security interest in any particular manner. Section 58-35-50 of the North Carolina General Statutes contains the only requirements for insurance premium financing agreements found under North Carolina law. However, Section 58-35-10 of the General Statutes exempts auto finance companies, such as CCC, from the provisions of that article.

In the absence of any applicable state law perfection requirements, CCC's security interest in the credit life insurance contract must be assumed to be perfected upon creation.

CCC's security interest in the extended warranty contract being itself in the nature of an insurance policy also, the same reasoning would apply. This interest was perfected on execution of the contract which created it.

As perfected security interests, Section 506 requires that these interests be valued and allowed as a part of CCC's secured claim to the extent of that value. From a liquidation perspective, there is no question these contracts have value. For absent bankruptcy, CCC would have liquidated the vehicle and applied the net proceeds to its debt. It would have also canceled these contracts and applied the premium funds against its debt as well.

Although the Debtors' plan contemplates retaining this vehicle, the conclusion must be made that these contracts nevertheless have value from a Section 506 perspective. The extended warranty contract serves to reduce the debtors's out-of-pocket maintenance costs over the life of the vehicle and insures that he

can afford major repairs, should they arise. The credit life insurance policy pays the CCC debt if the debtor(s) dies before the obligation is retired, freeing it for his or her survivors.

It is true that the extent of this value in use may be argued. However, some certainty is required in these cases. And just as vehicles' hypothetical liquidation values are regularly employed for plan purposes even when the Plan contemplates the Debtors retaining the auto, certainty dictates that credit life and service contracts be valued for plan purposes by their unearned premium amount.

Based on the foregoing, the Court concludes that CCC holds a valid perfected security interest in both the extended warranty contract and the credit life insurance contract as of the date of the Debtors' bankruptcy filing. The Debtors wish to maintain those policies. Therefore, CCC's secured claim in this Plan must be increased by the present value of those contracts, or \$1,683.50.

IT IS THEREFORE ORDERED that CCC's secured claim in this case be increased by \$1,683.50, from \$15,000.00 to \$16,683.50, to reflect the present value of the extended warranty contract and the credit life insurance contract.

This is the _____ day of _____, 1995.

United States Bankruptcy Judge